REMARKS

Summary

Claims 1, 3-9, 11-15, 17-20 and 22 stand in this application. Claims 1, 7, 9, 15 and 20 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Claim Objections

Claim 9 has been amended to correct minor informalities. Applicant respectfully requests removal of the claim objection in light of the above claim amendments.

35 U.S.C. § 103

At page 4, paragraph 4 claims 1, 3-9, 11-15, 17-20 and 22 were rejected under 35 USC § 103(a) as being unpatentable over Chen et al. (U.S. 7,069,439 B1) (hereinafter "Chen") in view of Nakayama et al. (U.S. Pub. No. 2004/0147251 A1) (hereinafter "Nakayama").

Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 3-9, 11-15, 17-20 and 22. Therefore claims 1, 3-9, 11-15, 17-20 and 22 define over Chen and Nakayama whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

> dynamically generating a first set of integrity information for a first processing system by selecting an application from a plurality of applications to be executed by said first processing system, and generating said first set of integrity information for said application using a cryptographic algorithm;
> sending said first set of integrity information to a second processing system; and
> generating an attestation value for said first processing system by said second processing system using said first set of integrity information and a dynamic attestation module connected to said second processing system prior to execution of said application by said first processing system.

As correctly noted in the Office Action, the above-recited language is not disclosed by Chen. According to the Office Action, the missing language is disclosed by Nakayama at paragraphs 0098 and 0102. Applicant respectfully disagrees.

Applicant respectfully submits that Nakayama fails to disclose the missing language of the claimed subject matter. For example, Nakayama at the given cite, in relevant part, states:

> [0098] At S4, the application transmitter 32 of store server 30 transmits the application 31a electronically signed by the private key A2, through ad hoc network N2 to the portable terminal 20. This transmission process may be push-type transmission in which the store server 30 forcibly transmits the application to every portable terminal including the portable terminal 20, or pull-type transmission in which the store server 30 transmits the application in response to an active transmission request from the portable terminal 20.

Nakayama, at the given cite, arguably discloses an application transmitter that transmits an application to one or more portable terminals. By way of contrast, the claimed subject matter "dynamically generating a first set of integrity information for a first processing system by selecting an application from a plurality of applications to be executed by said first processing system, and generating said first set of integrity information for said application using a cryptographic algorithm." Applicant respectfully submits that Nakayama clearly fails to teach or suggest the dynamic generation of a first set of integrity information for an application. Because no first set of integrity information is created in Nakayama, Applicant respectfully submits that Nakayama also fails to send said first set of integrity information to a second processing system. Therefore, Nakayama fails to disclose, teach or suggest the missing language.

Furthermore, Applicant respectfully submits that Chen fails to disclose the dynamic attestation of an application as argued by the Office Action at page 3. Chen, at the given cite, arguably discloses the use of a virus checker to check that application code has not been subverted. Applicant respectfully submits that this is clearly different than using a first and second processing system to generate an attestation value as disclosed by

the claimed subject matter. Consequently, Chen and Nakayama, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

For at least these reasons, Applicant submits that claim 1 is patentable over the cited references, whether taken alone or in combination. In addition, claims 7, 9, 15 and 20 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 7, 9, 15 and 20 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 1, 7, 9, 15 and 20. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims that depend from claims 1, 7, 9, 15 and 20, and therefore contain additional features that further distinguish these claims from the cited references.

Conclusion

For at least the above reasons, Applicant submits that claims 1, 3-9, 11-15, 17-20 and 22 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be

necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1, 3-9, 11-15, 17-20 and 22 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: April 30, 2008

KACVINSKY LLC
C/O Intellevate
P.O. Box 52050
Minneapolis, MN 55402
(724) 933-5529